REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NO.374 OF 2006**

% **Date of Decision** : 17th April, 2007.

SAT PAUL KALRA .... Appellant.
Through Mr. Ravinder Sethi, Sr. Advocate
with Mr.R.K. Saini, advocate.

VERSUS

D.D.A. .... Respondent.
Through Mr. Anil Sapra, Advocate.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. The present Appeal under Clause 10 of the Letters Patent Act is directed against the Order dated 6th May, 2005 passed in W.P.(C)

No. 4984/2005 dismissing the Writ Petition filed by the appellant herein.

2. Learned counsel for the appellant had submitted that compassionate and lenient view may be taken and the appellant may be allotted a MIG Flat at the current costs. In this regard he had relied upon the decision of the Division Bench of this Court dated 28th March, 2005 passed in LPA No. 61/2005 titled ***Vimal Marwah versus Delhi Development Authority and another*** and LPA No. 731/2003 titled ***Balber Prasad Jain versus Delhi Development Authority***. It was also submitted that there is no document on record to establish that the appellant was informed that he was successful in the draw of lots held in 1993.

3. The appellant had registered himself under the SFS Scheme floated by Delhi Development Authority (hereinafter referred to as DDA, for short) in 1985 for category II flat. He had deposited Rs.10,000/- with the DDA.

4. As per the Scheme, DDA was to periodically intimate/inform about availability of flats constructed under the Scheme in different

areas. This intimation/ information was given by taking out press advertisements and inviting applications from the registrants under the Scheme.

5. In 1987 and 1990, DDA had invited applications and the appellant applied for being considered for allocation of a flat but was not successful. In 1993, the appellant again applied and he was allotted a MIG flat in Rohini.

6. The appellant however claims that he was never informed about the said allotment. Learned counsel for the appellant in this regard had referred to Section 43(1) of the Delhi Development Act, which requires that notice should be send under registered post. It was submitted that there was nothing on record to establish that the appellant was informed about the allotment of the MIG flat by registered post. The appellant also claims that he had made repeated visits to the office of DDA between 1993-2004 but failed to get positive response and was compelled to file the aforesaid Writ Petition which stands dismissed by the impugned judgment.

7. We have examined the original file produced by DDA. Records

show that the appellant was successful in the draw of lots held on 23rd March, 1993 and was allotted MIG Flat in Block 11, Rohini. The estimated cost of the flat was Rs.5,61,400/-. Office copy of the said letter is available on record. “Registered A.D.” is written on the top right hand corner of the said letter. There is no correspondence or letter written by the appellant during the period 1993-2004. The first letter available on record is dated 23rd January, 2004. The said letter, however, has been captioned as 'third reminder' and states that two other letters were written earlier. The so-called letters written earlier were not filed along with the writ petition. There is no evidence or material to show that the appellant had written any letter till 24th January, 2004. It was admitted by the learned counsel for the appellant that from 1993 till 2002, DDA had from time to time invited applications from registrants for allocation of flats under construction in different areas. During this period from 1993-2002, the appellant did not apply for allotment of any flat. This may be contrasted with three applications for allotment made by the appellant during the period

from 1985-1993. Learned Single Judge in para 7 of the impugned judgment has specifically recorded that the counsel appearing for the appellant admitted that the appellant was aware that he was successful in the draw of lots in 1993 and consequently he stopped applying to the subsequent notices/advertisement. The statement was reiterated before us. If the appellant was aware and had knowledge about his allotment in 1993, as admitted, and had not received any allotment letter, he would have certainly written to the DDA. In the present case, it is admitted that there is no letter and correspondence written by the appellant during the period 1993-2004. This period is more than 11 years. It appears that the appellant was not interested in the flat at Rohini and therefore took his chance.

8. It may be relevant to state here that DDA had stated in the counter affidavit that they weed out records relating to letters/communications sent by registered post after every three years. In these circumstances, they can not now produce records to show that the letter of allotment in 1993 was sent to the

appellant by registered post. The appellant having belatedly approached the Court after nearly 11 years is guilty of laches as he himself claims that he was aware of allotment in 1993. In these circumstances, no fault can also be found with the DDA in not preserving and keeping the records relating to the letter of allotment sent under registered post. In any case, the appellant has admitted that he had knowledge of allotment in 1993, therefore the allegation that he had never received letter of allotment is of no consequence. It was for the appellant to approach DDA if he had not received the letter of allotment within reasonable time or at least write to DDA.

9. DDA has also explained that SFS Scheme in question was scrapped in 2002 after allotments were made to all the applicants who were interested. As the said Scheme has been closed, the appellant cannot now claim allotment of any flat under the said Scheme. We do not think any direction should be issued to DDA to allot a flat to the appellant at the current cost after the Scheme was closed in 2002. It is well known that there is difference

between the current cost charged by the DDA and the market value of the flats. The appellant wants to take advantage of the same. Admittedly, the appellant did not apply between the period 1993-2002 when repeatedly applications were invited by DDA from the registrants for allocation of flats. Issuing direction to DDA to offer a flat to the appellant at this stage will deprive some one who would be entitled to allotment. If the appellant is still interested and wants to acquire any flat he will have to be treated at par with others and not differently.

10. Order of the Division Bench of this Court in the case of ***Vimal Marwah*** (supra) is in a different context. In the said case the registrant had filed a writ petition in 1996 but the same was dismissed. Thereafter, an appeal was filed and DDA accepted her request for allotment of flat at the current cost. Order passed by the Court specifically records that the same was being passed in view of peculiar circumstances of the case and as the registrant had been dragged into litigation from 1992 i.e. before the Scheme was scrapped. The said Order cannot be regarded as laying down

any ratio or precedent.

11. We entirely agree with the findings of the learned Single Judge that the Writ Petition filed in 2004 was highly belated and bad for laches. Nothing prevented the appellant from approaching the Court within reasonable time if he had any grievance. The conduct of the appellant is also indicative of the fact that he was fully aware of the allotment made to him in 1993, as he had stopped applying thereafter. Learned Single Judge has rightly refused to accept the contention that the appellant used to visit DDA for a period of ten years. Learned Single Judge has also specifically recorded that public notices were issued in 2002 regarding closure of the Scheme.

12. It may be noted here that the learned Single Judge has already directed DDA to refund the amount paid by the appellant towards registration fee within four weeks with interest as per its policy. In these circumstances, we find no merit in the present Appeal. The appeal is accordingly dismissed. No costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

APRIL 17, 2007.
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